

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AIRBNB, INC.,

Plaintiff,

v.

THE CITY OF NEW YORK,

Defendant.

CIVIL ACTION NO. 18-cv-7712-PAE

**DECLARATION OF DAVID COUNTRYMAN IN SUPPORT OF
PLAINTIFF AIRBNB'S MOTION FOR A PRELIMINARY INJUNCTION**

I, David Countryman, declare as follows:

1. I am Director of Business Operations & Strategy at Airbnb, Inc. ("Airbnb"). I am over the age of 18 years and maintain an office at 888 Brannan Street, San Francisco, CA 94103. I have personal knowledge of the matters set forth in this declaration, and if called as a witness, I could and would testify under oath as follows.

The Airbnb Platform

2. Founded in 2008, Airbnb is a homesharing platform with the mission of creating a world where people can belong when they travel by connecting to local cultures and having unique travel experiences.

3. Airbnb provides an online platform through which individuals who wish to offer accommodations for rental ("hosts") and travelers seeking to rent such accommodations ("guests") can locate each other, securely communicate with each other, and enter into direct agreements to reserve and book travel accommodations.

4. Before anyone can use Airbnb's platform—as a host or guest—the user must first become a member of Airbnb. To sign up as a member on the Airbnb website, a user clicks the

“Sign up” link at the top right of the homepage, www.airbnb.com. Users can also sign up using Airbnb’s mobile app.

5. In signing up, the user submits identifying information (or enters their Facebook or Google credentials). After clicking “Sign up,” the user is prompted to accept Airbnb’s Community Commitment, Terms of Service, Payments Terms of Service, Privacy Policy, and Nondiscrimination Policy, all of which are mandatory to use the platform.

6. A true and correct copy of Airbnb’s Terms of Service, available at <https://www.airbnb.com/terms>, is attached hereto as Exhibit A. All users of Airbnb must accept and consent to the Terms of Service in order to post listings on the site or to book reservations. The Terms of Service provide that Airbnb’s “collection and use of personal information in connection with your access to and use of the Airbnb Platform is described in our Privacy Policy.” (Ex. A at 3.)

7. A true and correct copy of Airbnb’s Privacy Policy, available at https://www.airbnb.com/terms/privacy_policy, is attached hereto as Exhibit B. As set forth in the Privacy Policy, Airbnb keeps users’ sensitive personal information private and uses it for purposes of facilitating Airbnb transactions, such as to provide customer service, enable communications between users, and monitor for fraud. (*See* Ex. B § 2.) As set forth in the Policy, Airbnb discloses such information only in response to valid legal requests, with limited exceptions. (*See id.* § 3.5.)

8. A true and correct copy of Airbnb’s policy concerning data requests from law enforcement, available at <https://www.airbnb.com/help/article/960/how-does-airbnb-respond-to-data-requests-from-law-enforcement>, is attached hereto as Exhibit C. As set forth in the section detailing “[p]rocedures for US law enforcement requests,” Airbnb “has a policy of using

commercially reasonable efforts to notify users when it receives legal process from a third party requesting user data.” (Ex. C at 2.)

9. Pursuant to these policies, Airbnb provides information in response to legal process, including from the Mayor’s Office of Special Enforcement in New York City, after providing user notice whenever possible.

10. True and correct copies of the following Airbnb Help Center publications are attached hereto as Exhibit D-G:

Exhibit	Title	URL
Ex. D	“Is my listing’s address visible on Airbnb?”	https://www.airbnb.com/help/article/1502/is-my-listing-s-address-visible-on-airbnb
Ex. E	“How do I use search filters?”	https://www.airbnb.com/help/article/479/how-do-i-use-search-filters
Ex. F	“How do I contact a host before booking a reservation?”	https://www.airbnb.com/help/article/147/how-do-i-contact-a-host-before-booking-a-reservation
Ex. G	“Why Should I Pay and Communicate Through Airbnb Directly?”	https://www.airbnb.com/help/article/209/why-should-i-pay-and-communicate-through-airbnb

11. Airbnb’s online platform provides a means by which hosts can create listings for their accommodations. To become a “host,” a user creates a listing for their accommodation on the platform, and provides descriptions, images and videos, prices, and dates of availability for the space. (*See* Ex. B § 3.3.) A typical Airbnb listing shows the general location, basic description, and the host’s first name. Listings do not include a host’s full name, email address, or telephone number, nor do they disclose the listing address. (*See id.* § 3.3; Ex. D at 1.) All of that information is maintained in confidence by Airbnb.

12. While guests can search the platform by location, dates, or other criteria, in order to protect the privacy and security of the hosts, the platform does not disclose full host names or listing addresses in search results. (*See* Ex. E at 1.) Once guests have identified accommodations

in which they are interested, guests and hosts may securely and privately message each other through the platform. (*See* Ex. F at 1.) If a guest and a host reach an agreement, the platform then (and only then) securely discloses the listing address to the guest. (*See* Ex. D at 1.) The platform also provides a secure payment-processing service through which the guest pays the host electronically. (*See* Ex. B § 3.6; Ex. G at 1-2.) Airbnb also provides electronic storage on its platform for communications between users, as well as images and videos.

Airbnb in New York City

13. A true and correct copy of a report prepared by HR&A Advisors, Inc., dated April 2017, entitled “Sharing for a Stronger New York: Analysis of Economic Activity 2016,” is attached hereto as Exhibit H. According to that report, in 2016, more than 700,000 short-term rental bookings were made through Airbnb’s platform in New York City. (Ex. H at 32.) Publicly available data shows that Airbnb has a significantly positive impact on local communities, including those within New York City, with bookings in 2016 generating roughly \$2.8 billion in economic activity and supporting approximately 30,000 jobs. (*Id.* at 10.) Often Airbnb listings are outside of the typical tourist zones and offer more affordable accommodations than traditional commercial options.

14. A true and correct copy of a report prepared by Airbnb, dated July 2018, entitled “One Host, One Home: New York City (July 2018 Update),” available at https://2sqy5r1jf93u30kwzclsmfqt-wpengine.netdna-ssl.com/wp-content/uploads/2018/07/One-Host-One-Home-_-July-2018-Update.pdf, is attached hereto as Exhibit I. According to that report, as of July 1, 2018, there were approximately 27,500 “entire home” Airbnb listings spread across New York City. (Ex. I at 2.) In terms of the City’s overall housing stock, that amounts to approximately 0.8 percent of New York City homes. (*Id.* at 8.)

15. A true and correct copy of a report prepared by Airbnb, dated August 2018, entitled “One Host, One Home: New York City (August 2018 Update), available at <https://2sqy5r1jf93u30kwzc1smfqt-wpengine.netdna-ssl.com/wp-content/uploads/2018/08/One-Host-One-Home--August-2018-Update.pdf>, is attached hereto as Exhibit J. According to that report, as of August 1, 2018, there were approximately 28,000 “entire home” Airbnb listings spread across New York City. (Ex. J at 2.) In terms of the City’s overall housing stock, full-time entire-home listings amounted to approximately 0.2 percent of New York City homes. (*Id.* at 8.) The overwhelming majority of Airbnb hosts in New York City are individuals who have only one listing on the platform. As of August 1, 2018, 94% of Airbnb hosts in the City renting out full homes were individuals with a single entire-home listing. (*Id.* at 1.) A similar number rent out a private room or shared space within their home. As of August 1, 2018, there were approximately 25,750 such listings across New York City. (*Id.* at 2.) Overall, more than 90% of hosts share a property that is their primary residence. (*Id.* at 7.) And most hosts share space occasionally—the median nights booked per listing between August 2017 and August 2018 was 61, or just over one night per week. (*Id.* at 1, 3.) In an annual survey, 77% of hosts reported that they use the money they earn sharing their space to remain in their homes, 28% of hosts reported that homesharing has helped them avoid eviction, and another 18% reported that homesharing has helped them avoid foreclosure. (*Id.* at 7.)

16. In November 2015, Airbnb voluntarily announced a “Community Compact,” which stated the company’s commitment to prevent short-term rentals from impacting the availability of long-term rental housing. A true and correct copy of the Airbnb webpage describing its Community Compact, available at <https://www.airbnbcitizen.com/community-compact/>, is attached hereto as Exhibit K.

17. As part of its Community Compact, Airbnb removes New York City listings from its website that Airbnb believes may be offered by hosts with multiple entire home listings or are offered by unwelcome commercial operators. If Airbnb is alerted to shared spaces or private rooms in New York City that appear to be operated by unwelcome commercial operators or that do not reflect the community vision, it generally will remove such listings.

18. In a February 2016 letter to the New York State Assembly and Senate, Airbnb reiterated its “commitment to being a solution on housing affordability issues in New York City by continuing to remove listings from our platform that appear to be controlled by commercial operators and do not reflect Airbnb’s vision for our community.” A true and correct copy of that letter is attached hereto as Exhibit L. That letter also noted that, in the months following the announcement of the Community Compact, Airbnb unilaterally removed approximately 1,500 listings in New York City that were placed by commercial operators. (Ex. L at 2.)

19. In November 2016, Airbnb voluntarily implemented its “One Host, One Home” policy, which provides that a host can offer entire-home accommodations at only one New York City address. (*See* Ex. J at 1, 8.) As a result, hosts citywide are permitted to list entire homes only at one, discrete address (with certain exceptions, such as for corporate housing). (*See* Ex. J at 1, 8.) If hosts choose to publish a listing at a different address, Airbnb generally removes the additional listings. (*See* Ex. J at 1.) Between December 2015 and August 1, 2018, Airbnb removed more than 5,000 listings in New York City from hosts with multiple listings. (*See* Ex. J at 8.)

The Homesharing Surveillance Ordinance

20. I understand that Local Law 2018/146, N.Y.C. Admin. Code § 26-2101–4 (the “Homesharing Surveillance Ordinance” or the “Ordinance”) requires Airbnb to produce, to the Mayor’s Office of Special Enforcement, on a monthly basis, confidential information concerning every transaction involving a listing in New York City, including: the physical address of the unit

in which Airbnb guests are hosted, including the street name, street number, apartment or unit number, borough or county, and zip code; the host's full legal name, physical address, phone number and email address; the name, number and URL of the listing; a statement as to whether the listing involved a short-term rental of the entirety of a dwelling unit or housing accommodation in the building, or part of such unit or accommodation; the total number of the days during a particular month that the dwelling unit or housing accommodation was rented using Airbnb; and the total amount of fees received by Airbnb for each transaction. I further understand that the Ordinance requires Airbnb to obtain user "consent" to this disclosure of sensitive personal and financial information, including by telling users that their mere use of the platform shall constitute "consent."

21. Airbnb is one of a number of competitors that offer platforms for potential hosts to list properties for rent. As a competitor in this marketplace, Airbnb considers that its confidential business information is extremely important for Airbnb's ability to maintain its business success, and therefore takes various measures to guard its business information from unwanted disclosure.

22. Airbnb also takes various steps to protect the privacy of its hosts and guests. For example, as set forth above, although both hosts and guests complete profiles in order to participate on the site, personal information, including contact details and even last names, is not revealed until a booking has been completed. Furthermore, Airbnb collects information about hosts and guests in order to verify their actual identities, such as driver's licenses, but does not reveal that to other users of the site. These measures indicate the importance of privacy to the users of the Airbnb platform. A primary advantage of the current system implemented on the Airbnb platform is that it provides both security and privacy for hosts and guests. This, in turn, encourages hosts and guests to have confidence in Airbnb's platform, which is crucial for Airbnb's business success.

23. If Airbnb were forced to regularly disclose the type of confidential information required by the Homesharing Surveillance Ordinance, including not only users' identities but also the hosts responsible for each listing, the address of the host and the accommodation, the length of each stay, and the price paid for each stay, this could strongly discourage both hosts and guests from using the platform.

24. In addition, Airbnb would not choose to communicate to its users that they must consent to the production of their sensitive non-public data, nor would Airbnb choose to communicate to its users that their use of the platform shall constitute such consent. If Airbnb were forced to communicate those messages to its users, this could strongly discourage both hosts and guests from using the platform.

25. If the Homesharing Surveillance Ordinance goes into effect, prior to the effective date, Airbnb will be required to take steps to prepare, at significant cost to the company, including: (i) notifying tens of thousands of hosts of the City's new regulatory regime and seeking their consent to disclose their personal information; (ii) creating new processes and controls and revising its systems to ensure that it only lists properties where hosts have consented to disclosure of their personal information; and (iii) devising a system to collect and confirm the pertinent data and produce the required monthly transactional reports to the Office of Special Enforcement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 29th day of August, 2018, in San Francisco, California.

By:



David Countryman